

MEETING RECORD

NAME OF GROUP: City Board of Zoning Appeals

DATE, TIME AND

PLACE OF MEETING: Friday, June 24, 2005, 1:30 p.m., Hearing Chambers, County-City Building, 555 South 10th Street, Lincoln, Nebraska

MEMBERS AND OTHERS

IN ATTENDANCE:

Members:	Gene Carroll, George Hancock and Bob Kuzelka. Gerry Krieser and Tom Wanser absent.
Others:	Michele Williamson (Building & Safety), Tonya Skinner (City Law Dept.), Greg Czaplewski and Michele Abendroth (Planning Dept.), applicants and other interested parties.

STATED PURPOSE

OF THE MEETING: Regular Meeting of the City Board of Zoning Appeals

Chair Carroll called the meeting to order at 1:30 p.m.

Approval of the minutes of the May 20, 2005 meeting

Hancock moved approval of the May 20, 2005 meeting minutes seconded by Kuzelka. Motion carried 3-0. Carroll, Hancock and Kuzelka voting 'yes' Krieser and Wanser absent.

Appeal No. 05007 by J. Michael Rierden for a variance of the side and rear yard setbacks on property generally located at 7225 Oxford Road.

PUBLIC HEARING

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Greg Czaplewski stated that a revised staff report and a memo explaining the revisions were mailed to the Board members and applicant. The original staff report stated that there was one appeal requested, but there are actually three. There is one requesting a side yard setback variance, one requesting a rear yard setback variance and one based on an error by the City. Additionally, the error was not advertised, so testimony cannot be heard today on that portion. If the two setback variances are denied, then they will request a waiver on the error.

Czaplewski then presented a revised site drawing. The reference in the original staff report to the addition is an error. The appeal is for an addition that has already been constructed. They are here today to correct errors. A detached in-ground pool was constructed in 1974. A second story was later added to the enclosed pool in 1993. In 1995, the owner of the home applied for a variance from the Board of Zoning Appeals for an addition, and that appeal was denied. Between 1993 and 1995, they believe the home and pool structure were attached. When that happened, the entire structure was required to meet the house setbacks.

Michele Williamson stated that they believe the attachment between the house and the pool addition was done between 1993 and 1995. They do not have records showing that a building permit was applied for or received.

Michael Rierden, appearing on behalf of the applicant, presented a chronological sequence of events of the history of the construction of the house. In 1993 a building permit was issued to add a second story over the enclosed pool. At that time, the detached structure was attached to the main structure. There was also an error in that the side yard in the drawing was shown as 10 feet but it is actually 7.9 feet. The required setback is 10 feet. The rear yard in the drawing is shown as 21.8 but the required setback is 24 feet. He noted that the applicant did not own the property when the additions were constructed or the errors were made. He discovered the violations when he submitted an application for a building permit to add a room.

Rierden stated that if they are not successful in getting the variances, he will have to remove a portion of his house. This would be an extreme hardship.

Carroll asked if there was further testimony in favor of or against this appeal.

Dennis Gutz, 7215 Oxford Road, is the owner of the property directly to the west of the applicant. He is appearing in opposition because he does not feel that the denial of the appeal will deny the owner a reasonable use of his land. His concern is that if additional variances will be applied for if this appeal is granted. He also would like to know what would happen to the footings that he has already poured if the appeal is denied. He noted that he has owned his home since 1971. He stated that according to the previous owner, the structure was attached when the pool was enclosed. Gutz stated that he believes it has always been attached.

Hancock asked if the pool was ever not enclosed. Gutz stated that he believes it was always enclosed.

John Desmond, 1835 St. James, north of the applicant, stated that he feels this has been a trouble property from the beginning. When the pool was attached, it may not have been indicated on the building permit as it would have been denied. The concern he has is that about every 7-10 years they have to come and oppose zoning, and it is an extreme condition every time. A lot of work has been done on the house today without a permit. A brick veneer was applied last winter, and no building permit was ever displayed on the house. He has asked to see a building permit, but he has never been able to see one. He is directly opposed to the variance.

Jeri Gutz, 7215 Oxford Road, stated that she inquired as to why there was not a building permit displayed at the applicant's property, and she was told there was a building permit. She feels that they have not been receiving accurate information.

Rierden stated that the matter before the Board does not pertain to the new footings. It is his understanding that his client did obtain building permits and then they were later revoked due to the pending concerns.

Carroll stated that the yards were switched in 1995, so the appeal made at that time does not apply today. Skinner agreed that the application in 1995 was a different request. She stated that there has been a chain of errors on this property, and the error was not addressed in 1995. The testimony presented today that the structures were attached at the time of the addition changes things.

Carroll asked if the alleged error pertains to the building permit issued in 1993 which was not shown to be attached, and therefore the side yards were not measured. Williamson stated she believes that is correct.

Kuzelka asked if the addition could be built if the variance were granted on the rear yard. Williamson

stated that she does not know as they do not have an accurate site plan.

Hancock asked why the footings are there. Rierden stated that the applicant wanted to add a room and then went to get a building permit, which was originally approved and then later revoked after finding out about the problems. Williamson stated that a building permit was issued for an addition on February 23, 2005 and then denied April 1, 2005.

Carroll asked if it would be best to hold this application over until the next month since there was a publishing error. Skinner stated that they could do that or they could just hear testimony on the error next month. They can also vote today on the testimony taken on the two variances.

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Kuzelka asked if the variance will continue along the whole side of the house if the variance is granted. Carroll stated that they can grant the variance specific to the property. Skinner stated that this has been done on rare occasion. She suggested that a drawing being attached to the application and state that it is for the building currently existing today.

Carroll moved to deny the application for both the side and rear yard setbacks; it was seconded by Kuzelka. Carroll stated that the problem was not caused by the land, but the owner, so they cannot allow the changes to the zoning setbacks. Hancock stated that they are not permitted to grant a variance unless there are unusual, peculiar or exceptional circumstances. This body does not have the authority to take any action on this case, and he will abstain from voting. Skinner stated that he cannot abstain because he does not have a conflict of interest. This is within the Board's jurisdiction. The Board is not considering any errors today. They are only considering the variance to the setbacks today.

The motion to deny failed 1-2. Carroll voting 'yes'; Hancock and Kuzelka voting 'no'; Krieser and Wanser absent.

Carroll moved to carry the application over until next month, seconded by Kuzelka. Motion carried 3-0. Carroll, Hancock and Kuzelka voting 'yes'; Krieser and Wanser absent.

Appeal No. 05010 by Mark Hunzeker for a variance of the side yard setback on property generally located at 4030 S. 36th Street.

PUBLIC HEARING

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Mark Hunzeker, appearing on behalf of the owner of the property, stated that this is a unique situation. The addition to the house was constructed in 1993. The owner purchased the property in July 2002. In 2003, he remodeled the addition. It was reconstructed on the same footprint. A permit was issued and a final inspection was completed and approved. Then a complaint was made in 2005, and he was told by Building and Safety to tear it down. Apparently, the status of the building permit was changed from approved to denied. This is a case where an unfortunate mistake was made. The general rule is that an owner should not have to remove a building that was constructed on a permit issued in error. He stated that the letter in opposition is from a neighbor across the street. The next door neighbor is not complaining. He feels the variance is justified in this case.

Carroll asked if there was further testimony in favor of or against this appeal. With no one appearing further, Carroll moved to Executive Session.

ACTION

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Carroll moved to deny the application. There was no second of the motion. He asked for another motion.

Carroll asked Skinner what their options are. Skinner stated that they need to make a motion to approve, to deny, or to continue the hearing until next month.

Carroll again moved to deny, seconded by Kuzelka. Motion failed 2-1. Carroll and Kuzelka voting 'yes'; Hancock voting 'no'. Krieser and Wanser absent.

The application will be held over until the next meeting.

The meeting was adjourned at 2:35 p.m.

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